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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THIEN TRAN,

Plaintiff and Respondent,

v.

ANTHONY NGUYEN,

Defendant and Appellant.

G055022

(Super. Ct. No. 30-2014-00722873)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Robert J. Moss, Peter J. Wilson, and Timothy J. Stafford, Judges. Affirmed.

Anthony Nguyen, in pro. per., for Defendant and Appellant.

Law Offices of Andrew D. Weiss and Andrew D. Weiss for Plaintiff and Respondent.

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Anthony Nguyen appeals from six postjudgment orders entered by the trial court, following the court's entry of a restraining order in favor of Thien Tran against Nguyen in June 2014. This appeal is closely related to another appeal (G055078) that is currently pending, as are two other related appeals filed by Nguyen (G055097 (consol. w/G055130) and G054555), all of which were argued before us, along with an additional appeal Nguyen has filed from a different restraining order (G054555). As to the six orders Nguyen challenges in this matter, the governing standard of review on appeal requires us to presume the orders are correct unless Nguyen meets his burden to demonstrate error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*).) While listing the six orders in his notice of appeal, Nguyen neglects to mention or challenge several of them in his appellate brief, and provides no compelling reason to overturn any of the orders. We therefore affirm the trial court's rulings.

FACTUAL AND PROCEDURAL BACKGROUND

Nguyen's appeal in this matter stems from the fallout of ongoing postjudgment litigation following civil harassment proceedings in which Tran, in May 2014, sought a restraining order against Nguyen, alleging Nguyen over many "nights and days" harassed and threatened Tran and Tran's ex-wife, Hien. The record suggests Nguyen dated Hien at one time, before she returned to live with Tran. Tran alleged that Nguyen stalked Hien at her workplace and at Tran's home, trespassed on Tran's property, and threatened "to take Hien out with him," daring the couple to stop him. Viewing Nguyen as "dangerous" and "crazy," Tran and Hien pleaded for "a rest[r]aining order [against] him to keep us safe and protect[ed]." ¹ After a two-day trial

¹ In his briefing and at oral argument, Nguyen asserts, among other things, that he served with distinction in the United States Air Force and that he attended Harvard Law School. Tran contests these assertions. We find no evidence in the record to demonstrate these assertions are true.

held on June 6th and 10th, 2014, the trial court granted the restraining order against Nguyen as to Tran, but not as to Hien.

Nguyen twice appealed the trial court's order, in appellate case numbers G051373 and G051378, but this court dismissed the appeals as untimely. Nguyen then launched a series of federal and state court filings, including: (1) a federal lawsuit under the Racketeer Influenced and Corrupt Organizations (RICO) Act alleging claims against trial court judges, Tran's attorneys, and others, and (2) several unsuccessful attempts to remove pending state court proceedings to federal court, which the federal court denied and remanded back to state court.

Subsequent state court proceedings, including Tran's request for attorney fees in the dismissed appeals, which the trial court granted, resulted in eight further related appeals to this court, including this appeal challenging the trial court's renewal of the underlying restraining order on June 7, 2017. Four of these eight related appeals—which do not include at least two other appeals (G053946, G054555) involving a different restraining order—have been dismissed for various reasons. The grounds for dismissal include untimeliness (e.g., G054876) or, as this court's order in G055428 observed, lack of cognizable claims on appeal where Nguyen merely asserted “rambling unintelligible accusations . . . of ‘fraud and criminal activity’ by respondents and their attorney.” Altogether, the combined electronic record in this and the related surviving appeals exceeds 5,000 pages. Nguyen does not cite the record a single time in his appellate briefing to support any of his claims or arguments.

Nguyen's current appellate brief appears to once again challenge the trial court's original June 2014 restraining order, among numerous other arguments. Because Nguyen's notice of appeal does not include the June 2014 order, but instead designates six other subsequent orders as the subject of his appeal, we set forth a brief procedural history limited to those six orders since our appellate jurisdiction is limited by rule to the

judgment or orders specified in the notice of appeal. (Cal. Rules of Court, rule 8.100; *Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 504.)

The six orders that Nguyen appeals, which he identifies solely by their respective dates in his notice of appeal, are as follows:

(1) The November 18, 2016 order denied Nguyen’s motion for reconsideration of a March 11, 2016 order. Nguyen does not appear to include the November 18, 2016 motion for reconsideration in the record on appeal, nor the trial court’s order denying the motion. The underlying order that Nguyen requested the trial court to reconsider, which the court issued on March 11, 2016, awarded Tran \$7,080 in appellate attorney fees for the dismissed appeals (G051373 and G051378). The court awarded Tran his appellate fees under Code of Civil Procedure, section 527.6, subsection (s), which authorizes fees for the prevailing party in a harassment proceeding, including appellate attorney fees. (*Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 813.) The trial court’s order specified that Nguyen “does not argue that moving party was not the prevailing party on appeal, or that the fees are unreasonable.”

(2) The December 12, 2016 order struck pleadings that Nguyen filed on or after November 28, 2016, for failure to serve those pleadings on Tran, and required Nguyen to serve future pleadings by using a registered process server. Nguyen, however, previously appealed the December 12, 2016 order, and this court—well before Nguyen filed his opening brief in this matter—dismissed that earlier appeal as untimely (G054876).

(3) The March 30, 2017 order listed on Nguyen’s notice of appeal awarded Tran his costs, including postjudgment attorney fees, in the sum of \$31,601. Nguyen fails to cite the postjudgment costs order, Tran’s underlying motion for costs, or Nguyen’s response to the motion, if any.

(4) The April 24, 2017 order set a hearing on an order to show cause why Nguyen should not be held in contempt for failing to comply with the trial court's December 12, 2016 order striking Nguyen's pleadings and requiring him to use a registered process server. The record reflects that the trial court reset the hearing numerous times, and Nguyen does not disclose whether the court eventually held the hearing or, if so, the outcome. Nguyen does not appeal any of the subsequent orders resetting the hearing, nor the trial court's ruling, if any, which resulted from the hearing.

(5) The April 27, 2017 order apparently relates to a request for accommodation that Nguyen filed with the trial court. Nguyen does not appear to include in the record on appeal the request or the court's ruling.

(6) The May 3, 2017 order is a minute order denying Nguyen's ex parte applications to "quash" the April 24, 2017 order to show cause and to "set aside" the March 30, 2017 costs order.

DISCUSSION

We review Nguyen's challenges to each of the orders in turn. Before addressing each order and Nguyen's specific claims of error, we set out the governing appellate principles. Bedrock or "fundamental principles of appellate review" include the following: "(1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error." (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.) These principles are a "natural and logical corollary" of the fact that an appeal is not a retrial. (*Ibid.*) We must view the evidence in the light most favorable to the judgment or order appealed. (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 229.)

In a bench trial, as is the case here, the trial court is the trier of fact. Consequently, on appeal, “[a]ll of the evidence most favorable to the respondent must be accepted as true, and that unfavorable discarded as not having sufficient verity to be accepted by the trier of fact.” (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 370, pp. 427-428.) “With rhythmic regularity,” we therefore must remind litigants “that we have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom. No one seems to listen.” (*Overton v. Vita-Food Corp.* (1949) 94 Cal.App.2d 367, 370, disapproved on another ground in *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866, fn. 2.)

Our limited role on appeal permits reversal of a judgment or order only when the appellant meets his or her burden to show prejudicial legal error. (Cal. Const., art. VI, § 13; *Denham, supra*, 2 Cal.3d at p. 566.) “An appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority.” (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685.) It is not enough simply to raise an issue or a ruling for general review. “When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.” (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 (*Badie*).) Furthermore, a party must “support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations.” (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

In light of these principles, “conclusory claims of error will fail” (*In re S.C.* (2006) 138 Cal.App.4th 396, 408), and a brief that is no more than a “rambling and disjointed series of accusations” forfeits the party’s claims. (*Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 817.) These principles apply equally to self-represented parties. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

(1) November 18, 2016 Order

The November 18, 2016 order denied Nguyen's motion for reconsideration of a March 11, 2016 order awarding Tran \$7,080 in appellate attorney fees. Nguyen's appeal of the order fails for three reasons. First, it is untimely because it was filed on May 26, 2017, which was 189 days after the November 18, 2016 order Nguyen purported to appeal from, which itself followed months after the trial court's March 11, 2016 appellate fee order, a final and appealable postjudgment order. (Code Civ. Proc., § 904.1, subds. (a)(1), (2).) When no notice of entry of a judgment or order has been filed, the outermost limit for an appeal is 180 days after entry of a final and appealable order. (Cal. Rules of Court, rule 8.104(a)(1)(c).) Nguyen's challenge to the November 18, 2016 order is therefore time-barred.

Second, even if the appeal had been timely, the November 18, 2016 order denied Nguyen's motion for reconsideration of the underlying March 11, 2016 order, and—with exceptions not pertinent here—an order denying a reconsideration motion is not itself appealable. (*Chango Coffee, Inc. v. Applied Underwriters, Inc.* (2017) 11 Cal.App.5th 1247, 1252-1254.)

Third and finally, Nguyen did not designate the underlying March 11, 2016 attorney fee order as part of the record on appeal. Nor did he designate his own reconsideration motion or Tran's response, if any, that resulted in the trial court's November 18, 2016 order denying Nguyen's reconsideration request. Nor does Nguyen provide record citations for any of these documents, if they in fact are part of the 5,000 page record on appeal.

Nguyen repeats these same errors with many of the subsequent orders he purports to appeal, and, for brevity, we note the omission once here as an independent basis demonstrating there is no merit to Nguyen's claims on appeal. “‘Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].’” (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.) “‘Rather

than scour the record unguided, we may decide that the appellant has waived a point urged on appeal” (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287), and that is the case here.

(2) December 12, 2016 Order

The December 12, 2016 order struck pleadings that Nguyen filed on or after November 28, 2016, for failure to serve those pleadings on Tran, and required Nguyen to serve any future pleadings by using a registered process server. Nguyen’s appeal of the December 12, 2016 order is not only untimely, it is barred by *res judicata*. Nguyen previously attempted to appeal the December 12, 2016 order, but a panel of this court in case number G054876 dismissed the appeal as untimely because it came more than 60 days after notice of entry of the underlying final order. Principles of *res judicata* and collateral estoppel therefore preclude Nguyen’s attempt to relitigate the earlier appeal of the same order. (*Roos v. Red* (2005) 130 Cal.App.4th 870, 879-880.)

(3) March 30, 2017 Order

The March 30, 2017 order awarded Tran \$31,601 in postjudgment costs. Despite Nguyen’s failure to provide a citation to the order or Tran’s underlying costs motion, our review of the record discloses that the bulk of the costs order was for postjudgment attorney fees. Nguyen’s challenge to the costs order consists solely of a heading that he repeats three times in his brief, without elaboration. The heading alleges, without elaboration anywhere in the brief, that the trial court erred in entering the cost order because Tran’s attorney submitted “FRAUDULENT charges and Criminal Activities in his MEMO [of costs],” by which “the Court was misled and [*sic*] obtained \$31,000 by FRAUD and Criminal Activities. (See EXHIBITS).” The heading states the court “erred in grant[ing] \$31,000 to . . . attorney fees for Erroneous Restraining Order”

Nguyen's challenge in a heading in his appellate brief, without more, forfeits his claims because an appellant's burden to demonstrate error requires, at a minimum, reasoned argument and citations to authority. (Cal. Rules of Court, rule 8.204(a)(1)(B) & (C); *Badie, supra*, 67 Cal.App.4th at 784-785.) On page 18 of his brief, Nguyen makes a vague reference to "Marcy [*sic*] Laws to Protect Crime Victim," but he does not cite or explain the nature of those laws or their relevance to his challenge to the March 30, 2017 cost order, nor to any of the other orders he appeals. A party's lack of citation and analysis forfeits his or her claim. (*Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830-1831, fn. 4.) We therefore deem Nguyen's vague reliance on "Marcy Laws" to constitute forfeiture for failure to explain how those provisions bear on the March 2017 order or other orders on appeal.

Nguyen's challenge to the March 30, 2017 order on grounds of unspecified fraud in the costs memo and unexplained criminal activities similarly fails. We assume the "EXHIBITS" that Nguyen refers to in his headings are those attached to his opening brief, but the exhibits have no apparent relationship to the costs order or any other order on appeal. Instead, they seem designed to bolster his claim that *he* was entitled to a restraining order against Tran based on an alleged incident or incidents that occurred in 2014. The trial court, however, adjudicated those claims at the two-day trial in June 2014, and did not find Nguyen credible, granting Tran, rather than Nguyen, a restraining order in its June 10, 2014 ruling. As noted above, Nguyen twice appealed the trial court's June 10, 2014 restraining order, but this court dismissed the appeals as untimely (G051373, G051378). Nguyen may not now relitigate that untimely challenge. His challenge to the March 30, 2017 cost order therefore fails.

(4) April 24, 2017 Order

The April 24, 2017 order set a hearing on an order to show cause why Nguyen should not be held in contempt for failing to comply with the trial court's December 12, 2016, order striking Nguyen's pleadings and requiring him to use a

registered process server. Nguyen challenges the order setting the hearing on grounds that “Civil Code[s] 1211 require[s] ‘When the Contempt is not committed before [the] presence of [the] Court, the Affidavit should be present before the Court.’” Nguyen therefore argues there was “NOT any evidence” supporting the order to show cause setting a hearing on whether Nguyen violated the court’s December 12, 2016 order requiring him to use a registered process server for further pleadings.

Our review of the record suggests that Nguyen derives this argument from an interim order filed by the trial court, which rescheduled the hearing on the order to show cause. The court reset the hearing numerous times for various reasons. On one of those occasions, the court observed “there was no supporting affidavit setting forth the incidents when Defendant Nguyen violated the order of December 12, 20[1]6.” The court noted that section 1211 of the Code of Civil Procedure “requires that ‘When the contempt is not committed in the immediate view and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officers.’”

Nguyen fails to disclose, however, that in a subsequent order the trial court stated that Tran’s request for an order setting an OSC hearing “is now Granted based upon an Affidavit . . . filed” by Tran. Our review of the record discloses that Tran’s attorney filed multiple affidavits supporting the OSC request, including an affidavit on April 10, 2017, explaining, with examples, that “during the nearly two years I have represented Thien Tran, I have rarely received service by, or on behalf of, Anthony Nguyen of the many pleadings he has filed” Ample evidence therefore supports the trial court’s order setting the OSC hearing, demonstrating that Nguyen’s challenge to the April 24, 2017 order is without merit.

(5) April 27, 2017 Order

The April 27, 2017 order apparently relates to a request for accommodation that Nguyen filed with the trial court. Nguyen does not appear to include anywhere in the record on appeal the specific accommodation request or the court's ruling. Nor does he make any argument in his brief concerning the April 27, 2017 order. Nguyen also did not file a sealed brief to address what may have been a confidential request. The fact that Nguyen had obtained a fee waiver in the trial court is not itself confidential, nor is the fact that Tran's attempt to overturn or revoke the fee waiver on appeal was denied as moot in one of Nguyen's previous appeals (G054734). It does not appear Tran renewed his challenge to Nguyen's fee waiver in subsequent appeals. In any event, because Nguyen only listed the April 27, 2017 order in his notice of appeal, and made no argument whatsoever concerning the order, this challenge to the trial court's ruling—whatever the substance of that ruling was—is meritless. Incomplete or undeveloped arguments are forfeited. (*T.P. v. T.W.* (2011) 191 Cal.App.4th 1428, 1440, fn. 12.)

(6) May 3, 2017 Order

The May 3, 2017 order is a minute order denying Nguyen's ex parte applications to "quash" the April 24, 2017 order to show cause and to "set aside" the March 30, 2017 costs order. As we have explained, Nguyen's challenges to these underlying orders have no merit. In appealing the May 3rd order denying his motion to quash those underlying orders, Nguyen advances no further reason to support quashing the orders, nor any authority for the trial court to do so. Indeed, apart from his reference to the May 3, 2017 order in his notice of appeal, Nguyen does not provide any argument in his brief to overturn the order. His challenge is therefore wholly without merit.

DISPOSITION

Nguyen's appellate challenges to postjudgment orders entered on (1) November 18, 2016, (2) December 12, 2016, (3) March 30, 2017, (4) April 24, 2017, (5) April 27, 2017, and (6) May 3, 2017 are meritless. We therefore affirm those orders. Respondent is entitled to his costs on appeal.

GOETHALS, J.

WE CONCUR:

FYBEL, ACTING P. J.

THOMPSON, J.